

Docket No. AT9-99-234

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: **Gusler et al.**

Serial No.: **09/439,054**

Filed: **November 12, 1999**

For: **Enhanced Backup and Recovery  
Methodology**

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Group Art Unit: **2177**

Examiner: **Le, Debbie M.**

**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**Certificate of Mailing Under 37 C.F.R. § 1.8(a)**

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By:

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**APPEAL BRIEF (37 C.F.R. 41.37)**

This brief is in furtherance of the Notice of Appeal, filed in this case on September 30, 2004.

The fees required under § 41.20(B)(2), and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

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### **REAL PARTY IN INTEREST**

The real party in interest in this appeal is the following party: International Business Machines Corporation.

### **RELATED APPEALS AND INTERFERENCES**

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

## **STATUS OF CLAIMS**

### **A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1, 4-17, and 20-38.

### **B. STATUS OF ALL THE CLAIMS IN APPLICATION**

1. Claims canceled: 2-3, and 18-19.
2. Claims withdrawn from consideration but not canceled: NONE
3. Claims pending: 1, 4-17, and 20-38.
4. Claims allowed: NONE
5. Claims rejected: 1, 4-17, and 20-38.

### **C. CLAIMS ON APPEAL**

The claims on appeal are: 1, 4-17, and 20-38.

### **STATUS OF AMENDMENTS**

There are no amendments after the final rejection.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

Applicants' claim 1 describes a data processing system implemented method for automating a filesystem backup process. The method comprises building a table file. The table file lists filesystems to be backed up. (Specification page 13, lines 5-7.) The method also comprises specifying within the table file one of a plurality of backup utilities for each one of the filesystems listed in the table file. Different backup utilities are specified within the table file. (Specification page 23, lines 5-13.) The table file is accessed. One of the different backup utilities is executed to backup a filesystem listed in the table file where the backup utility to be executed is specified for the filesystem. (Specification page 27, line 8 through page 30, line 10.)

Applicants' claim 5 depends on claim 1 and describes the table file comprising a logical location of the filesystem to be backed up. (Specification page 22, lines 25-27.)

Applicants' claim 6 depends on claim 1 and describes the table file comprising a number of copies to be created. (Specification page 22, lines 27-29.)

Applicants' claim 8 depends on claim 1 and describes locking the table file prior to backing up the filesystem. (Specification page 23, lines 13-16.)

Applicants' claim 9 depends on claim 8 and describes detecting an error in backing up the filesystem, unlocking the table file, and editing the table file. (Specification page 23, lines 16-18.)

Applicants' claim 10 depends on claim 1 and describes re-syncing logical volumes servicing the filesystems prior to backing up the filesystem. (Specification page 27, line 8 through page 30, line 10.)

Applicants' claim 11 depends on claim 1 and describes building a table file being performed by an automated script. (Specification page 24, lines 9-10.)

Applicants' claim 12 depends on claim 1 and describes accessing a table file being a function performed by an automated script. (Specification page 29, lines 21-24.)

Applicants' claim 13 depends on claim 1 and describes an automated script performing executing the backup utility to back up the filesystem. (Specification page 28, lines 10-12.)

Applicants' claim 14 depends on claim 9 and describes unlocking the table file being performed by an automated script. (Specification page 25, lines 1-3.)

Applicants' claim 15 depends on claim 10 and describes re-syncing logical volumes being performed by an automated script. (Specification page 27, lines 15-18.)

Applicants' claim 16 depends on claim 7 and describes splitting the filesystem being performed by an automated script. (Specification page 29, lines 11-13.)

Applicants' claim 34 depends on claim 1 and describes the step of specifying a backup utility for each filesystem listed in the table file where the backup utility includes an AIX backup. (Specification page 22, lines 15-21.)

Applicants' claim 35 depends on claim 1 and describes the step of specifying a backup utility for each filesystem listed in the table file where the backup utility includes an ADSM selective backup. (Specification page 22, lines 15-21.)

Applicants' claim 36 depends on claim 1 and describes the step of specifying a backup utility for each filesystem listed in the table file where the backup utility includes an ADSM incremental backup. (Specification page 22, lines 15-21.)

Applicants' claim 37 depends on claim 1 and describes the step of specifying a backup utility for each filesystem listed in the table file where the backup utility includes an ADSM archive. (Specification page 22, lines 15-21.)

Applicants' claim 38 depends on claim 1 and describes including a first filesystem and a second filesystem in the table file, specifying a first backup utility for backing up the first filesystem, and specifying a second backup utility for backing up the second filesystem, where the first backup utility is different from the second backup utility. (Specification page 22, lines 3-34.)

The remaining claims are system and computer program product claims with features that are similar to those described above.

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Are the Examiner's rejections of claims 1, 4, 7, 17, 20, 23, 33, and 38 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,539,905 issued to *Nissato*, claims 5-6, 8-16, 21-22, and 24-32 under 35 U.S.C. § 103(a) as being unpatentable over *Nissato* in view of U.S. Patent No. 5,966,730 issued to *Zulch*, and claims 34-37 under 35 U.S.C. § 103(a) as being unpatentable over *Nissato* in view of U.S. Patent No. 6,026,414 issued to *Anglin* well founded?



## ARGUMENT

The Examiner rejected claims 1, 4, 7, 17, 20, 23, 33, and 38 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,539,905 issued to *Nissato*. This position is not well founded.

*Nissato* teaches a method for gaining exclusive control of a facility on an electrical power company's map of its facilities, such as poles, in order to modify the facility. *Nissato* is a system for simultaneously processing "map DBs". *Nissato* does not define a "DB". Applicants have assumed *Nissato* is referring to a database when it refers to a "DB".

Applicants claim automating a filesystem backup process including building a table file where the table file lists filesystems to be backed up. The Examiner states that *Nissato* teaches building a table file where the table file lists filesystems to be backed up in Figure 1, reference number 17, and column 1, lines 10-20.

Column 1, lines 10-20 describes the invention of *Nissato* which is the ability to gain exclusive control of a power facility map. Nothing in this section of *Nissato* teaches any sort of table at all. This section teaches electric power company facilities, maps, and the desire to gain exclusive control of a facility on a map. This section also apparently teaches a database of maps by referring to a "map DB". However, nothing in this section of *Nissato* teaches a table of any type. This section certainly does not teach a table file that lists filesystems. The section does not teach a table file that lists filesystems to be backed up. This section does not teach building a table file. This section does not even describe backing up the maps that are taught. The section merely describes a map DB and the processing of a plurality of map DBs.

Reference number 17 in figure 1 is a terminal map DB. Presumably this is a database in which maps are stored although this is not explicitly taught by *Nissato* because the term DB is never defined. A database in which maps are stored is not a table file. A database in which maps are stored is not a table file which lists filesystems. A database in which maps are stored is not a table file which lists filesystems that are to be backed up.

Therefore, *Nissato* does not anticipate Applicants' claims because *Nissato* does not teach building a table file, wherein the table files lists filesystems to be backed up.

Applicants claim specifying, within the table file, one of a plurality of different backup utilities for each of the filesystems listed in the table file where the table file includes different

backup utilities that are specified. The Examiner states that *Nissato* teaches, at column 1, lines 35-39, specifying, within the table file, one of a plurality of different backup utilities for each filesystem listed in the table file where the table file includes different backup utilities being specified.

This section of *Nissato* teaches the generation of a facility exclusion key. The facility exclusion key is generated from a record name of a facility DB and a key of the facility. Exclusion control is made based on this key. Other facilities in the same map are updated simultaneously.

Nothing in this section of *Nissato* teaches specifying anything. It teaches the generation of a key based on other key information.

Nothing in this section of *Nissato* teaches specifying anything within a table file. Nothing in this section teaches backing up anything. Nothing in this section teaches specifying a backup utility.

Nothing in this section teaches a utility of any sort. A utility is well known in the data processing system art to be “a program designed to perform a particular function”. See Microsoft Press Computer Dictionary, Third Edition, published 1997. The definition of “utility” goes on to state “the term usually refers to software that solves narrowly focused problems or those related to computer system management”. *Nissato* does not teach a utility of any sort. *Nissato* certainly does not teach a backup utility.

Therefore, *Nissato* does not anticipate Applicants’ claims because *Nissato* does not teach specifying, within the table file, one of a plurality of different backup utilities for each of the filesystems listed in the table file where the table file includes different backup utilities that are specified.

Applicants claim accessing the table file. The Examiner states that *Nissato* teaches accessing the table file at figure 1 and the element contents 3507. Element 3507 depicts a map number. A map number is not a table file. A map number does not teach accessing a table file. Therefore, *Nissato* does not anticipate Applicants’ claims because *Nissato* does not teach accessing a table file.

Applicants claim executing one of the backup utilities to backup a filesystem listed in the table file. The Examiner states that *Nissato* teaches executing one of a plurality of different backup utilities to backup a filesystem listed in the table file in Figure 1, reference number 2, host 27, column 2, lines 1-23, and column 3, lines 21-49.

Reference number 2 references a host. Reference number 27 references a host map DB.

Column 2, lines 1-23 describes generating a facility exclusion key from a key value of the facility indicated on the map and a record name of the facility. This section also describes updating a facility and resetting the exclusion of the facility exclusion managing DB 28 by sending a message to the host of the update. Updating a facility is not the same as executing a backup utility to backup a filesystem. This section of *Nissato* does not teach backing up anything. This section certainly does not teach executing a backup utility to backup a filesystem. Therefore, *Nissato* does not anticipate Applicants' claims because *Nissato* does not teach executing one of the backup utilities to backup a filesystem listed in the table file.

Regarding claim 38, the Examiner states *Nissato* teaches including a first filesystem and a second filesystem within the table, and specifying a first backup utility for backing up the first filesystem and a second backup utility for backing up the second filesystem at column 1, lines 35-39, column 2, lines 19-23, column 4, lines 7-15, and column 5, lines 19-29.

The sections referred to by the Examiner in columns 1 and 2 have been discussed above. Column 4, lines 7-15, describes obtaining a facility exclusion key from a record name and a key value of the facility in the drawing. This exclusion key is then sent to the host.

Column 5, lines 19-29, describes executing exclusion control on the basis of a unique facility exclusion key. The map can be simultaneously updated from a plurality of terminals.

None of these cited sections of *Nissato* teaches a filesystem, a table file, a utility, a backup utility, a backup utility for each filesystem, or backing up a filesystem using its backup utility.

Therefore, *Nissato* does not anticipate Applicants' claims because *Nissato* does not teach a filesystem, a table file, a utility, a backup utility, a backup utility for each filesystem, or backing up a filesystem using its backup utility.

The Examiner rejected claims 5-6, 8-16, 21-22, and 24-32 under 35 U.S.C. § 103(a) as being unpatentable over *Nissato* in view of U.S. Patent No. 5,966,730 issued to *Zulch*. This position is not well founded.

Regarding claims 5-6, the Examiner stated that *Nissato* does not teach the table file comprising a logical location for at least one backup copy or a number of copies to be created. The Examiner relies on *Zulch* to supply the features missing from *Nissato* stating that *Zulch* teaches at least one backup copy and a number of copies to be created at figures 2-4 and columns 5-7.

*Zulch* teaches a script that is written by an administrator to manage backups. The script of *Zulch* does not specify a backup utility to use to execute the backup. *Zulch* does not teach building a table file, wherein the table file lists filesystems to be backed up, specifying, within the table file, one of a plurality of different backup utilities for each one of the filesystems listed in the table file, accessing the table file, or executing one of the backup utilities to backup a filesystem listed in the table file.

The combination of *Zulch* with *Nissato* does not render Applicants' claims unpatentable because the combination does not describe, teach, or suggest building a table file, wherein the table file lists filesystems to be backed up, specifying, within the table file, one of a plurality of different backup utilities for each one of the filesystems listed in the table file, accessing the table file, or executing one of the backup utilities to backup a filesystem listed in the table file in combination with the table file comprising a logical location for a backup copy or a number of copies to be created.

Regarding claims 8-10, the Examiner stated that *Zulch* does not teach the steps of prior to backing up the filesystem, locking the table file, detecting an error, unlocking the table file, editing the table file, and re-syncing logical volumes. The Examiner states that these steps are considered to be an obvious choice of implementation in order to obtain backup and recover data. The Examiner does not rely on any art that teaches the features of claims 8-10.

Further, the combination of *Zulch* with *Nissato* does not render Applicants' claims unpatentable because the combination does not describe, teach, or suggest building a table file, wherein the table file lists filesystems to be backed up, specifying, within the table file, one of a plurality of different backup utilities for each one of the filesystems listed in the table file, accessing the table file, or executing one of the backup utilities to backup a filesystem listed in the table file in combination with the features of claims 8-10.

Regarding claims 11-16, the Examiner stated that *Nissato* does not teach the steps being performed by an automated script. The Examiner relies on *Zulch* to supply the features missing from *Nissato* stating that *Zulch* teaches the script containing a time table for when the script should be active at column 3, lines 63-67.

The combination of *Zulch* with *Nissato* does not render Applicants' claims unpatentable because the combination does not describe, teach, or suggest building a table file, wherein the table file lists filesystems to be backed up, specifying, within the table file, one of a plurality of

different backup utilities for each one of the filesystems listed in the table file, accessing the table file, or executing one of the backup utilities to backup a filesystem listed in the table file in combination with the features of claims 11-16.

Regarding claims 14-16 the Examiner stated that *Nissato* does not teach unlocking the table file, re-synching logical volumes, and splitting the filesystem being performed by an automated script. The Examiner relies on *Zulch* to supply the features missing from *Nissato* stating that *Zulch* teaches such an automated script.

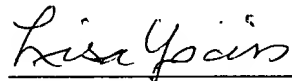
The combination of *Zulch* with *Nissato* does not render Applicants' claims unpatentable because the combination does not describe, teach, or suggest building a table file, wherein the table file lists filesystems to be backed up, specifying, within the table file, one of a plurality of different backup utilities for each one of the filesystems listed in the table file, accessing the table file, or executing one of the backup utilities to backup a filesystem listed in the table file in combination with the features of claims 14-16.

The Examiner rejected claims 34-37 under 35 U.S.C. § 103(a) as being unpatentable over *Nissato* in view of U.S. Patent No. 6,026,414 issued to *Anglin*. This position is not well founded.

The Examiner stated that *Nissato* does not teach the step of the backup utilities including an AIX, ADSM selective, ADSM incremental, or ADSM archive backup. The Examiner relies on *Anglin* to supply the features missing from *Nissato* stating that *Anglin* teaches these types of backup utilities.

*Anglin* teaches the ADSM product. However, the combination of *Anglin* with *Nissato* does not render Applicants' claims unpatentable because the combination does not describe, teach, or suggest building a table file, wherein the table file lists filesystems to be backed up, specifying, within the table file, one of a plurality of different backup utilities for each one of the filesystems listed in the table file, accessing the table file, or executing one of the backup utilities to backup a filesystem listed in the table file in combination with the features of claims 34-37.

The cited prior art does not describe, teach, or suggest building a table file, wherein the table file lists filesystems to be backed up, specifying, within the table file, one of a plurality of different backup utilities for each one of the filesystems listed in the table file, accessing the table file, or executing one of the backup utilities to backup a filesystem listed in the table file. Therefore, Applicants' claims are believed to be patentable over the cited prior art.



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## **CLAIMS APPENDIX**

The text of the claims involved in the appeal reads:

1. A data processing system implemented method for automating a filesystem backup

process, comprising:

building a table file, wherein the table file lists filesystems to be backed up;

specifying, within said table file, one of a plurality of different backup utilities for each of said filesystems listed in said table file, said table file including different backup utilities being specified;

accessing the table file; and

executing one of said plurality of different backup utilities to backup a filesystem listed in the table file wherein said one of said plurality of different backup utilities is specified for said filesystem, further wherein different backup utilities are specified within said table file.

4. The method recited in claim 1, wherein the table file further comprises a logical location of the filesystem to be backed up.

5. The method recited in claim 1, wherein the table file further comprises a logical location for at least one backup copy.

6. The method recited in claim 1, wherein the table file further comprises a number of copies to be created.

7. The method recited in claim 1, further comprising, prior to backing up the filesystem, splitting the filesystem on the basis of the filesystem being in use during backing up the filesystem.
8. The method recited in claim 1, further comprising, prior to backing up the filesystem, locking the table file.
9. The method recited in claim 8, further comprising:
  - detecting an error in backing up the filesystem;
  - unlocking the table file; and
  - editing the table file.
10. The method recited in claim 1, further comprising, prior to backing up the filesystem, re-syncing logical volumes servicing the filesystems.
11. The method recited in claim 1, wherein building a table file is performed by an automated script.
12. The method recited in claim 1, wherein accessing a table file is a function performed by an automated script.
13. The method recited in claim 1, wherein said step of executing said one of said plurality of backup utilities to back up the filesystem is performed by an automated script.



14. The method recited in claim 9, wherein unlocking the table file is performed by an automated script.

15. The method recited in claim 10, wherein re-syncing logical volumes is performed by an automated script.

16. The method recited in claim 7, wherein splitting the filesystem is performed by an automated script.

17. A data processing system for automating a filesystem backup process, comprising:  
building means for building a table file, wherein the table file lists filesystems to be backed up;

specifying means for specifying, within said table file, one of a plurality of different backup utilities for each of said filesystems listed in said table file, said table file including different backup utilities being specified;

accessing means for accessing the table file; and

executing means for executing one of said plurality of different backup utilities to backup a filesystem listed in the table file wherein said one of said plurality of different backup utilities is specified for said filesystem, further wherein different backup utilities are specified within said table file.

20. The system recited in claim 17, wherein the table file further comprises a logical location of the filesystem to be backed up.

21. The system recited in claim 17, wherein the table file further comprises a logical location for at least one backup copy.
22. The system recited in claim 17, wherein the table file further comprises a number of copies to be created.
23. The system recited in claim 17, further comprising:  
splitting means for splitting the filesystem on the basis of the filesystem being in use during backing up the filesystem.
24. The system recited in claim 17, further comprising:  
locking means for locking the table file.
25. The system recited in claim 24, further comprising:  
detecting means for detecting an error in backing up the filesystem;  
unlocking means for unlocking the table file; and  
editing means for editing the table file.
26. The system recited in claim 17, further comprising:  
re-syncing means for re-syncing logical volumes servicing the filesystems.
27. The system recited in claim 17, the building means for building a table file is an automated script.

28. The system recited in claim 17, wherein the accessing means for accessing a table file is by an automated script.

29. The system recited in claim 17, wherein said executing means for executing said one of said plurality of backup utilities to back up the filesystem is an automated script.

30. The system recited in claim 25, wherein the unlocking means for unlocking the table file is an automated script.

31. The system recited in claim 26, wherein the re-syncing means for re-syncing logical volumes is an automated script.

32. The system recited in claim 23, the splitting means for splitting the filesystem is an automated script.

33. A data processing system implemented computer program product for automating a filesystem backup process, comprising:

building instructions for building a table file, wherein the table file lists filesystems to be backed up;

specifying instructions for specifying, within said table file, one of a plurality of different backup utilities for each of said filesystems listed in said table file, said table file including different backup utilities being specified;

accessing instructions for accessing the table file; and

executing instructions for executing one of said plurality of different backup utilities to backup a filesystem listed in the table file wherein said one of said plurality of different backup utilities is specified for said filesystem, further wherein different backup utilities are specified within said table file.

34. The method according to claim 1, further comprising the step of specifying one of a plurality of different backup utilities for each of said filesystems listed in said table file, said plurality of different backup utilities including an AIX backup.

35. The method according to claim 1, further comprising the step of specifying one of a plurality of different backup utilities for each of said filesystems listed in said table file, said plurality of different backup utilities including an ADSM selective backup.

36. The method according to claim 1, further comprising the step of specifying one of a plurality of different backup utilities for each of said filesystems listed in said table file, said plurality of different backup utilities including an ADSM incremental backup.

37. The method according to claim 1, further comprising the step of specifying one of a plurality of different backup utilities for each of said filesystems listed in said table file, said plurality of different backup utilities including an ADSM archive.

38. The method according to claim 1, further comprising the steps of:  
including a first filesystem and a second filesystem within said table file;

specifying a first backup utility for backing up said first filesystem; and  
specifying a second backup utility for backing up said second filesystem, wherein said  
first backup utility is different from said second backup utility.

## **EVIDENCE APPENDIX**

There is no evidence to be presented.

## **RELATED PROCEEDINGS APPENDIX**

There are no related proceedings.